

CITY OF MEDFORD

BOARDS & COMMISSIONS



RULES AND PROCEDURES

2021 Edition



This handbook is subject to change as policies are amended or modified. The City Recorder does not give legal advice. This handbook is not intended to be legal advice.

© January 2021
City of Medford

TABLE OF CONTENTS

GENERAL CITY INFORMATION	5
Vision, Mission Statement, Core Values	
Council Goals	
CITY ORGANIZATIONAL CHART	9
COORDINATION WITH COUNCIL AND STAFF	11
Responsibilities of Boards and Commissions	
Communications to Council	
Council Liaisons	
Staff Liaisons for Boards and Commissions	
Relationship between Staff and Board or Commission	
General Communication Guidelines	
PARLIAMENTARY PROCEDURE	15
Basic Principles	
Quorum	
Motions	
To Obtain the Floor	
Types of Motions	
Amending a Motion	
LAND USE MATTERS	23
POLICIES	27
iPad/Technology	
Harassment and Non-Discrimination	
Violence Free Workplace	
OREGON LAWS	41
Oregon Public Meetings Law	
Oregon Public Records Law	
Ethics and Conflicts of Interest	
Lessons Learned from Lane County	
Oregon Government Ethics Law	Supplement

This page intentionally left blank.



VISION

Medford will continue to offer an exceptional quality of life for all generations. Residents and visitors alike will experience a vibrant community, safe and connected neighborhoods, and exemplary cultural and recreational opportunities. As the center of the Southern Oregon economy, businesses and educational institutions will find a collaborative environment encouraging partnerships, growth and innovation.

MISSION STATEMENT

Medford - A Fantastic Place to Live, Work & Play

CORE VALUES

Integrity: Adherence to moral principles and professional ethics – sound character.

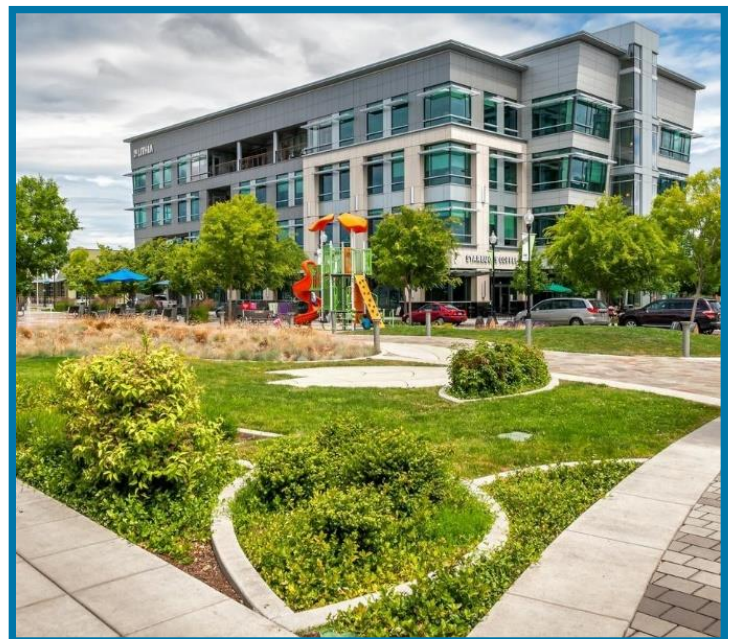
Accountability: We recognize our decisions and actions, as individuals and as an organization, positively impact the community through best practices.

Caring: Enthusiastically embracing our community through a performance culture.

Courage: Have the courage to make the difficult decisions and stand by them.

Teamwork:

Valuing our colleagues and community in working collaboratively.



COUNCIL GOALS – Adopted by Resolution 2019-63

Housing Strategies: Enhancing livability for all residents by providing and safeguarding a range of housing choices in Medford.

- Complete Urban Growth Boundary Amendment
- Regional Housing Strategy – As required by Regional Problem Solving
- Develop Opportunities for Downtown Housing
 - Define Downtown area where strategies will be utilized

Community Engagement: Bring community stakeholders together to discuss common vision for what Medford is going to strive to accomplish. Engagement includes involving and informing citizens about the Vision, Mission and Goals for the City.

- Complete and approve an internal visioning process that includes:
 - Core Values
 - 2017-19 Council Goals
- Develop a broad-based vision with community stakeholders
 - Medford 2050 Plan
- Develop a branding strategy for the City
 - Create new City logo
 - Create hashtag
 - Increase social media presence

Public Infrastructure: Proactively plan for and respond to identified infrastructure needs by providing facilities essential for citizens and visitors to live, work and play in a manner that is financially and environmentally sustainable.

- Complete vitally important plans
 - Transportation System Plan
 - Sewer Collection System Master Plan
- Update to Pavement Management Strategy
- Determine feasibility of a potential Event/Recreation Center
- Aquatic facility analysis and direction
- Citywide space needs assessment/City Hall utilization strategy

Economic Development: The City will play an active role in maintaining and enhancing Medford's diverse economy with an emphasis on family wage jobs.

- Collaborate with SOREDI in development of an economic strategy
- Re-apply for re-designation of the current Urban Enterprise Zone

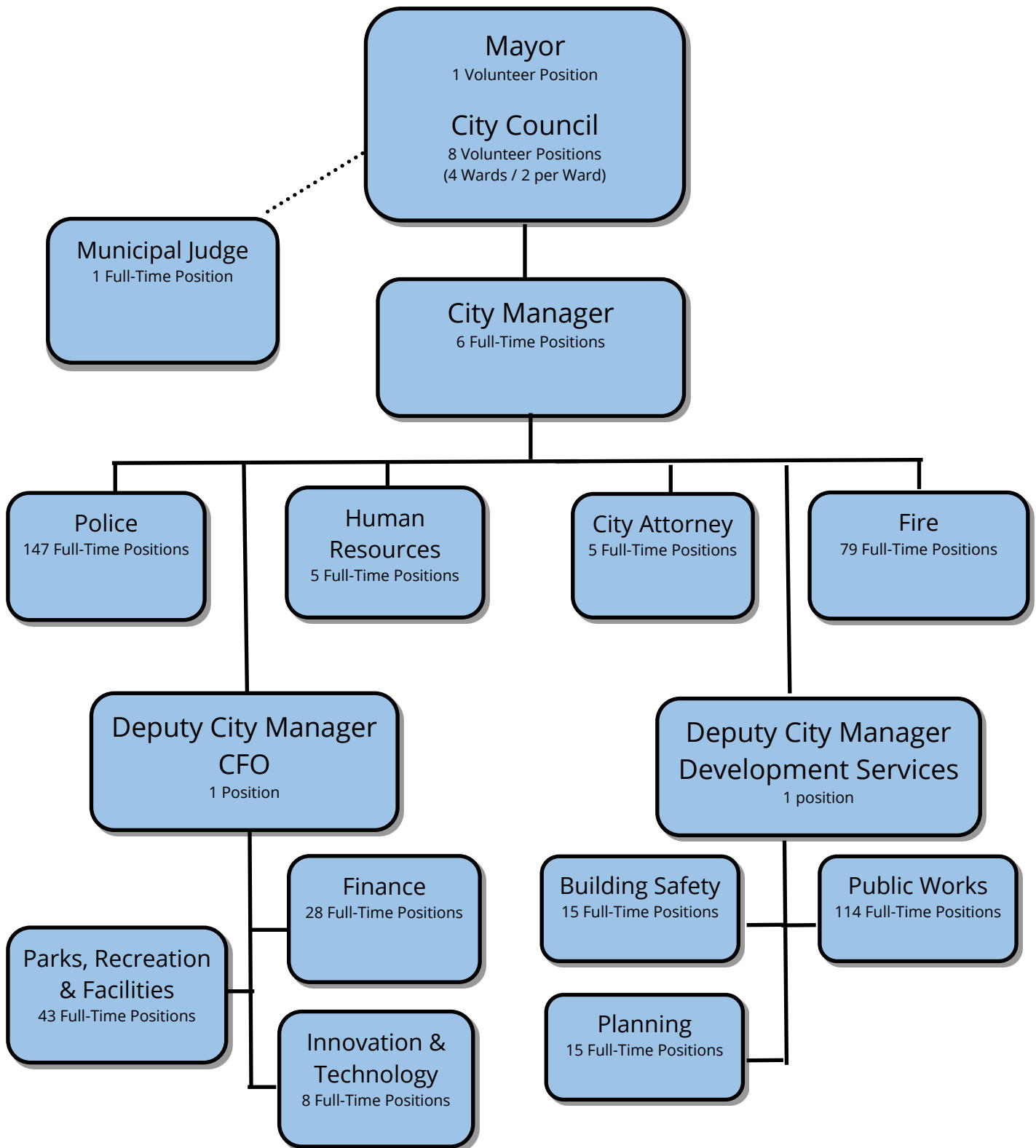
- Provide case management approach to large industrial/commercial customers
 - Designated point person in each development services departments that will have direct access to City Manager's office to quickly resolve communication issues.
- Training of staff in order to become more business friendly

Downtown & Redevelopment: The City will seek opportunities to assist with the development and redevelopment opportunities within the downtown core area.

- Determine future of current Urban Renewal District
 - Review need for additional new district areas
- Seek Federal and State grants to assist with seismic retrofits for downtown properties
- Public/Private partnerships for developing City owned downtown properties for housing and/or retail
- Partner with established downtown organizations to set priorities and funding mechanisms for improvements
 - SPARC Central Medford
 - Chamber

This page intentionally left blank.

2019-2021 ORGANIZATIONAL CHART



This page intentionally left blank.

COORDINATION WITH COUNCIL AND STAFF

RESPONSIBILITIES OF BOARDS AND COMMISSIONS

All Boards and Commissions should regularly solicit public testimony under guidelines established by the City Council and Medford Code. Public forums should be held for issues with major public impact.

COMMUNICATIONS TO COUNCIL

The Council relies on various Boards and Commissions to increase the variety of viewpoints and talents brought to bear on City problems. By concentrating on specific areas, Board and Commission members can expand their level of expertise and can conduct detailed analyses that Council itself may not have the time to pursue.

It is expected that Boards and Commissions will adopt positions of advocacy within their specific spheres of interest. However, the Council's role is to take into consideration the many varied, and sometimes conflicting public needs, and render its judgment of what will best serve the public good. The Council must weigh the effect of any given recommendation, not only on the particular area of interest, but on all other City goals and programs.

COUNCIL LIAISONS

Medford Code 2.436 explains the roles of Council liaisons as follows:

- (1) At the second regular City Council session, the Council president shall appoint Council liaisons to the following City Boards and Commissions:

- Chamber of Commerce Board
- Hospital Facilities Authority (2 positions)
- Housing Advisory Committee
- Medford Water Commission
- Rogue Valley Area Commission on Transportation (RVACT)
- Rogue Valley Council of Governments (RVCOG)
- Rogue Valley Metropolitan Planning Organization (RVMPO)
- Regional Rate Committee (2 positions)
- Southern Oregon Regional Economic Development Inc. (SOREDI)
- Parking Committee
- Parks & Recreation Commission
- Police Advisory Committee
- Transportation Commission
- TRADCO

Travel Medford Board

The role of Council liaison shall include the following:

- (a) Secure alternate if unable to attend;
 - (i) If an alternate is attending, brief alternate regarding materials for meeting and issues that could arise;
 - (b) Provide regular updates to the entire Council as to the concerns or issues for this Board or Commission;
 - (c) Provide the communication link from the Council to the Board or Commission;
 - (d) Relay Council direction to Board or Commission to assist them in fulfilling their goals and duties as defined by the Medford Code; and
 - (e) Be knowledgeable regarding issues and vision of the Board or Commission.
- (2) Council liaisons shall not be considered members of, nor count towards a quorum of, the Board or Commission they are appointed to unless they are a voting member.
- (3) Council liaisons shall not deliberate on, nor vote on, any matter presented to their Board or Commission unless they are a voting member. Liaisons are communicators between the volunteer commission/board and the City Council. Liaisons should assist with problems and clarifications which develop, but should not stifle the work of the Board or Commission.
- (4) With respect to City Boards and Commissions that make quasi-judicial decisions that can be appealed to the City Council, Council liaisons shall not participate in any discussion of the matter that can be appealed. These types of Boards and Commissions include, but are not limited to: Site Plan and Architectural Commission, Planning Commission and Landmarks and Historic Preservation Commission.
- (5) When the City Council is sitting as the Board for the Urban Renewal Agency, no Council liaison will be appointed.
- (6) Some Boards and Commissions are not City of Medford Boards and Commissions, but instead include a member from the governing body of the City as a voting member of the Board or Commission. In these instances, the Council member may act as a voting member of the Board, not as a Council liaison. Those Council members, when appropriate, should obtain direction from the entire Council prior to voting on a matter. Staff appointed as representatives, including alternates to such Boards and Commissions shall follow the guidelines of this subsection.

STAFF LIAISONS TO BOARDS AND COMMISSIONS

Each Board and Commission has at least one staff person assigned to the group as a Staff liaison. Staff liaisons assure their Board or Commission is aware of laws and

administrative processes affecting proposed policy and operational recommendations. The staff liaison's main responsibility is assisting their Board or Commission in its functions.

Other responsibilities include the following:

- 1) Assist with professional and technical questions.
- 2) Prepare and distribute Board and Commission letters, reports, agendas and/or minutes.
- 3) Maintain public records created by the Board or Commission, including minutes or action summaries, reports, recommendations and letters, as required by State law.
- 4) Notify Board or Commission members of upcoming meetings.
- 5) Maintain current contact information for the Board or Commission members.

RELATIONSHIP BETWEEN STAFF AND BOARD OR COMMISSION

If a Board or Commission desires information or a report that will require an excessive amount of staff time, the Board or Commission chairperson should request City Manager or Department Director approval prior to pursuing the project. The Board or Commission chairperson should inform the staff person with regard to the urgency of the referral. Following this procedure will prevent staff from being diverted from priority projects.

GENERAL COMMUNICATION GUIDELINES

- Treat everyone with respect.
- Agree to Disagree.
- Resolve issues and move on, don't re-live the same issues.
- Share information freely.
- Keep a balance of "air time" in meetings to avoid domination of ideas.
- Deal directly and respectfully if a conflict occurs.
- Share responsibility for information or decisions that come from a meeting.
- Openly support decision, once it has been made.
- Encourage and support team members at all levels.
- Query participants frequently; ask for input and feedback on issues.
- Be flexible and open for change.
- Be aware of others discomfort/anxiety.
- Take responsibility for your feelings, biases and attitudes and know how they can impact your ability to treat others with respect or make the right decision.
- Have a sense of humor; be able to laugh at the funny moments.

This page intentionally left blank.

PARLIAMENTARY PROCEDURE

Parliamentary Procedure is the basic method of conducting business. Business is brought before an assembly by means of a motion. Business meetings are generally governed by Roberts Rules of Order, Newly Revised.

BASIC PRINCIPLES

1. All members must receive a notice of the meeting
2. There must be quorum present at the meeting
3. There can be only one main motion or resolution before the assembly at a time.
4. Motions have a definite and logical order of precedence.
5. Every member has the right to express his/her opinion fully and freely without interruption, and must be given the opportunity to do so
6. A question must be decided by taking a vote, decided by the majority, and that vote becomes the decision of the assembly. A subject once decided may not be presented again in the same form
7. Action cannot be taken outside the scope of the organization's object or purpose

QUORUM

Before calling the meeting to order, it is the duty of the Chair to know whether a quorum is present. See the Oregon Public Meetings Law Section of this handbook for additional information regarding quorum.

MOTIONS

A motion is the means by which business is brought before an assembly. A motion is sometimes referred to as "the question". The following steps are essential in handling a motion.

TO OBTAIN THE FLOOR

1. Address the Chair by -proper title
2. Receive recognition from the Chair
3. Then states the motion by saying "I move that..."
4. Another member seconds the motion
5. Chair repeats the motion and then says
"It has been moved and seconded that (motion) Is there any discussion?"
6. Member discuss the motion
7. When discussion ceases, Chair requests the roll call
8. Chair announces the result of the vote

A motion is a formal proposal and once made and seconded, the Chair places the question before the meeting body by restating the motion. Exact wording is of the utmost importance in recording motions and amendments. Motions require a second

before being opened for discussion or being put to a vote. If there was no second to the motion, the motion dies.

TYPES OF MOTIONS

Main Motion: A main motion is a motion brought before the body for its consideration on a particular subject. Only one main motion can be considered at a time.

Amendment: There are three basic processes of amendment, to:

- (1) Insert a word or add words
- (2) Strike out words or a paragraph
- (3) Combine both of these. An amendment needs a second and is debatable. It needs a majority vote to pass. To amend a pending motion is the most widely used form of subsidiary motion. An amendment must be germane or closely related to the subject of the main motion.

Second Amendment: A secondary amendment must relate to the primary amendment and cannot introduce a totally different subject. The second amendment must be made by motion and seconded. After discussion, Chair takes the vote on the second amendment first; announces the vote; and proceeds to take the vote on the primary amendment; and then takes the vote on the main motion as amended if the amendments pass.

Previous Question: Previous question is the motion used to bring the body to an immediate vote on one or more pending questions. It closes debate and stops further amendment. It is out of order when another has the floor. It must be seconded and is not debatable and non-amendable. Previous question requires a two-thirds vote (super majority). If a motion for the previous question fails to gain the two-thirds vote, debate continues as if the motion had not been made.

Division of the Assembly: When a member doubts the correctness of a vote taken by voice, he or she may call for division of the assembly by calling out "Division". No second is needed and the Chair must immediately take the vote again and ask the member to either raise their hands or to rise.

Reconsider: A motion to reconsider is in order during the meeting after a motion has been acted upon either at the same meeting or the next meeting. It must be made by a member who voted on the prevailing side, i.e. if a motion fails to pass, reconsideration must be moved by one who voted against the motion. It is debatable and requires a majority vote.

Point of Order: When a member believes the parliamentary rules are being violated, he or she can make a "point of order" by calling upon the Chair to request the

parliamentarian for the rule which the Chair should enforce.

Division of the Question: If a question contains more than one part, each of which could stand as a separate questions, a motion may be made to divide the question and vote on each part separately. The motion to divide requires a second and may be amended, but is not debatable.

Lay on the Table: The motion to “lay on the table” enables the Board or Commission to lay the pending question aside temporarily in such a way that (1) there is no set time for taking the matter up again; and (2) its consideration can be resumed at the will of the majority. By adopting the motion to “lay on the table”, a majority has the power to halt consideration of the question immediately without debate.

This motion takes precedence over all subsidiary motions. It is out of order when another has the floor. It must be seconded and is non-debatable and non-amendable, but it is appropriate for the maker of the motion to explain the reasons for the motion. It requires a majority vote.

Take from the Table: When a matter is taken from the table, everything is in the same condition as it was when laid on the table. A motion that has been taken from the table can be laid on the table again when an unforeseen matter requires immediate attention. If a matter is laid on the table, it remains there until taken from the table or until the close of the next regular meeting. If not taken up by that time, the motion dies.

To consider another motion on the same subject, it is necessary first to take the question from the table and then move the new proposal as a substitute or to make whatever other motion is appropriate to the cases.

Adjourn: This means to close the meeting immediately. It requires a second and it is non-debatable and non-amendable. It requires a majority vote. Members should not leave their seats until this motion is made. If an hour has been set by adoption of the Board or Commission, no motion to adjourn is necessary when the hour arrives. The Chair declares the meeting adjourned. When it appears there is no further business, the Chair can ask if there is any further business to be considered, instead of waiting for a motion. If there is no response, the Chair can say, “Since there is no further business, the meeting is adjourned.”

Fix the time to which to Adjourn: The object of this motion is to set the time and place for another meeting to continue business of the session with no effect on when the present meeting will adjourn. It is appropriate to use this motion when there are no existing provisions for another meeting. It must be seconded and is debatable. It can be

amended and a vote on it can be reconsidered.

AMENDING A MOTION

Changing the wording of a motion is amending it. The main motion and some secondary motions can be amended. Here are some rules to remember:

1. The motion to amend requires recognition and a second, and must be stated by the Chair. It is debatable and may be amended. The amendment must be voted on; then another amendment is in order, each acted on in order. The fact that the amendment has been acted on does not mean that the main motion is also acted on. After all amendments are acted on, the final vote is on the main motion as amended.
2. If the amendment has failed to carry, it cannot be made again.
3. An amendment improves the main motion. The purpose is to express more clearly and definitely the intent of the motion, therefore an amendment cannot change one form into another.
4. An amendment is debatable in all cases except where the motion to be amended is un-debatable.
5. An amendment is out of order if it nullifies the proposition or if it makes it dilatory.
6. An amendment is out of order if it strikes out words NOT consecutive or if it strikes out and inserts in separate places.
7. No amendment is in order that increases the modification of the rule to be amended.
8. The word "Substitute" is used correctly when referring to a paragraph not to a word. A completely reworded motion is a substitute.

WAYS TO AMEND A MOTION

1. By adding words at the end
2. By inserting a word or consecutive words
3. By striking out a word or consecutive words
4. By striking out a word or consecutive words and inserting a word or consecutive words
5. By substitution (replacing the motion with a similar motion)

Correct way to state amendment:

"I move to amend the motion by (one of the ways listed above)..."

MOTIONS NOT SPECIFICALLY CLASSIFIED

There are some motions that are not specifically classified. The ones most commonly used are:

1. To make a nomination: This is a motion not formally moved, but an assumed motion "That...be elected". A member rises and without recognition says, "I nominate..." No second is required but as an assumed motion, it is debatable.

2. To fill a blank: This is closely related to the motion to amend. While there can be only one primary and one secondary amendment pending at the same time, there are times when a number of choices would be more advantages; such as, selecting a date, time, place, amount, number of persons, or names, or places.

A member may move that a blank be spent for books: or a blank may be created by a motion to strike out a date, time, place, amount, number, names, etc. and insert a blank. If the motion to strike out and insert a blank has carried, then any number of members may suggest, without a second, a different date, time, amount, etc. Each suggestion can be debated if necessary. When all suggestions have been made, a vote is taken on the suggestions until one suggestion receives a majority vote, then that suggestion is placed in the blank and the remaining suggestions are not voted upon. The motion with the blank filled is then considered.

3. Call up the motion to reconsider: If the Chair neglects to announce the reconsideration of a motion, any member may 'call up' the consideration by rising and obtaining the floor and saying, "I call up the motion to reconsider the vote taken on the motion (state the motion)..." No second is necessary. The Chair then proceeds to state the motion by saying, "The motion to reconsider the vote on (state the motion)...is called up. Those in favor of reconsidering the vote on the motion will please say Aye." pause "Those opposed will please say no." If the Ayes have it, the motion is open to debate (if it is a debatable motion). After debate, a vote is taken on the motion that was reconsidered.

TABLE 1 - MOTION

MOTION	DEBATABLE	PRIVILEGED	SUBSIDIARY
Fix the time to which to adjourn *	NO	YES	
Adjourn	NO	YES	
Take a Recess *	NO	YES	
Raise a question of privilege	NO	YES	
Call for the orders of the day	NO	YES	
Lay on the table	NO		YES
Previous question (stop debate) (two-thirds)	NO		YES
Limit or extend debate * (two-thirds)	NO		YES
Postpone to a certain time *	YES		YES

Commit or refer *	YES		YES
Amend *	YES		YES
Postpone indefinitely	YES		YES
Main Motion *	YES		

* Can be amended; the others cannot be amended.

Highest ranking motion is listed at the top; lowest ranking motion is at the bottom.

When any one of them is immediately pending, the motions above it are in order and those below it are not in order.

TABLE 2 - RULES GOVERNING MOTIONS

RANKING MOTIONS
Order of Precedence

PRIVILEGED MOTIONS	Can interrupt speaker	Requires Second	Debatable	Amendable	Vote Required	Can be Reconsidered
Fix the time TO WHICH to	No	Yes	No	Yes	Majority	Yes
Adjourn	No	Yes	No	No	Majority	No
Take a recess	No	Yes	No	Yes	Majority	No
Question of	Yes	No	No	No	*	No
Orders of the	Yes	No	No	No	*	No
SUBSIDIARY MOTIONS						
Lay on the table (temporarily)	No	Yes	No	No	Majority	No
Previous Question (Vote	No	Yes	No	No	2/3	Yes
Limit or Extend	No	Yes	No	Yes	2/3	Yes
Postpone to	No	Yes	Yes	Yes	Majority	Yes

Refer to	No	Yes	Yes	Yes	Majority	Yes
Amend	No	Yes	Yes	Yes	Majority	Yes
Postpone Indefinitely	No	Yes	Yes	No	Majority	Aff. only
MAIN MOTION	No	Yes	Yes	Yes	Majority	Yes

*Chair usually decides. Majority if put to vote.

Those marked with a (2/3) require a two-thirds vote for adoption; the other motions require only a majority vote.

This page intentionally left blank.

LAND USE MATTERS

Land use matters are highly regulated by state statutes. Not only is there significant substantive regulation (i.e. what use can be made of land), but there also are pervasive regulations governing how a local government must make decisions that involve the use of land.

STATE LAND USE LAWS

In 1973, the Legislature adopted Senate Bill 100 which established the standards by which local governments must make land use decisions. The legislation also established the Land Conservation and Development Commission (LCDC) to develop Statewide Planning Goals and Guidelines. Local governments were required to adopt comprehensive land use plans to implement the Goals developed by LCDC. Local governments' comprehensive plans have to be approved, or "acknowledged" by LCDC to ensure Goal compliance.

As a result of a 1973 decision by the Oregon Supreme Court, the courts began to separate land use decisions into different types: legislative, quasi-judicial, and administrative/ministerial actions, which are detailed in subsequent sections.

COMPREHENSIVE PLAN

A Comprehensive Plan sets out a City's goals and direction for land use and public facility planning and must cover a period of 20 years. Medford's Comprehensive Plan includes provisions which implement each Statewide Planning Goal in a way that applies to the specific area covered by the Comprehensive Plan, i.e., lands within the Medford Urban Growth Boundary (UGB). It contains data, inventories, analysis of the data, conclusions based on the analysis, policies and findings related to the conclusions, and goals. The policy provisions prevail when implementing or interpreting the plan. Other textual provisions may help to interpret the policies, but may not be given greater weight than the policies. The Comprehensive Plan also contains the General Land Use Plan (GLUP) Map which depicts the City's Urban Growth Boundary and the land use designations within that boundary.

CITY LAND USE/DEVELOPMENT CODE

In addition to a comprehensive plan, cities have a land use/development code that implements the land use policies and map contained in the comprehensive plan. The code contains specific zoning designations, consistent with the land use designations on the land use plan map. In addition, the code sets out procedures for making land use decisions, and the criteria and standards that the decision-maker must apply for each type of decision.

The Medford Land Development Code is found in Chapter 10 of the Municipal Code and contains a description of each of the City's land use zones and what types of uses are allowed. In each zone, there may be uses that are permitted outright, without the need for a hearing. Other uses may be allowed if certain standards and criteria are found to be met after a public hearing. These may include such requirements as the proposed development not causing unreasonable street congestion or preventing access to adjoining property. The code also contains development standards that govern how a particular use may be developed. These standards include such things as setbacks, parking, and landscaping.

The procedural provisions in the code designate a decision-maker for each type of decision and whether or not there is an opportunity for an appeal to another local decision-maker. The Code sets out the procedures that must be applied during the initial local-level decision and the procedures that must be adhered to on appeal. These procedures must be as required by state law.

TYPES OF LAND USE DECISIONS

In general, there are four types of land use decisions. For each, there is a different procedure to follow.

MINISTERIAL DECISIONS

A ministerial decision is one that requires the decision-maker to use no discretion because the applicable standards are clear and may be applied mechanically. Examples of this type of decision include issuance of building permits and sign permits. For this type of decision, the state imposes no notice or hearing requirements.

ADMINISTRATIVE DECISIONS

An administrative decision is one that requires little discretion. City staff usually makes the initial decision, and, if appealed, a hearing will be conducted before a commission or City Council. An example of an administrative decision is a planning director approval of a minor change to a Planning Unit Development (PUD).

QUASI-JUDICIAL DECISIONS

Quasi-judicial decisions require a public hearing at which the decision-maker takes evidence and hears arguments. Common examples of quasi-judicial decisions include consideration of subdivisions zone changes, or applications for a conditional use permit. A quasi-judicial decision requires a hearing prior to the initial decision. In most cities, the hearing and decision is conducted by the Planning Commission. The City Council is the decision-maker at an appeal hearing. In Medford, some quasi-judicial decisions are made by the City Council, such as General Land Use Plan Map amendments.

Quasi-judicial decisions have the following procedural requirements:

1. Notification of pending decision. This may include publication, mailing and/or posting. There are detailed requirements for the content of the notice
2. Providing public access to application materials and staff reports prior to the hearing
3. Reading of a script at the beginning of the hearing describing participants' rights at the hearing and the procedures to be used
4. Providing an opportunity for the applicant and general public to be heard. This includes the opportunity for the applicant to rebut evidence;
5. Providing an impartial decision-maker whose impartiality is ensured through rules addressing conflict of interest, ex parte contacts and bias
6. In certain circumstances, allowing a continuance of the hearing, or leaving the record open for more evidence or argument
7. Adopting a decision that includes findings
8. Keeping a record of the hearing
9. Notification of final decision

LEGISLATIVE DECISIONS

Legislative decisions are those which result in policy-making by the City Council. They affect the community as a whole rather than a small area or a few individuals. These decisions give the government body a great deal of discretion. The most common example of a legislative decision is the adoption or amendment of an ordinance or large area plan. For these decisions, there are fewer criteria for the Council to consider. Rather, the Council makes determinations about the legislative decision's consistency with other land development code provisions (if the decision is regarding a code provision), the Comprehensive Plan and Statewide Planning Goals.

Notice is generally required through publication according to Medford Municipal Code section 10.124 and ORS 222.120 and 197.610. Because these decisions result in the adoption of policy or legislation, the final decision is made by the City Council.

This page intentionally left blank.

POLICIES

IPAD/TECHNOLOGY POLICY

Some Boards and Commissions members are provided with technology, which is to be used for City of Medford business purposes only. Technology is defined as including cell phones, iPads, laptops, desktop computers and other devices. Technology equipment, its component parts, all hardware and software and its stored electronic memory are the sole property of the City and are subject to Oregon Record Retention rules. Therefore, no expectation whatsoever of privacy as to any communication generated, received by, sent by or stored in the technology device(s) should be assumed.

The City maintains an electronic mail (email) system and internet access. This is provided to assist in the conduct of the business of the City and should be used for City-related work purposes only. Use of email and/or internet access is prohibited for personal, recreational, or non-City business. Users of the City's email system have no expectation of privacy regarding email or internet use. The City utilizes an automated archive system that captures all emails and may be accessed by the City as needed.

ADMINISTRATIVE REGULATIONS



MEDFORD
CITY MANAGER'S OFFICE

ADMINISTRATIVE REGULATION

Number: 201

Adopted: 1985

Revised/Readopted: 02/18/2020

Orig. Number(s): 85-09-R6

Title: Harassment and Non-Discrimination

Purpose:

The City is committed to providing equal employment opportunities to all persons regardless of race; color; religion; ancestry; national origin; age; marital or veteran status; physical or mental disability; on-the-job injuries; sex or pregnancy; sexual orientation, gender expression, or gender identity; military service; domestic violence victim; or any other legally protected status under State or Federal law, unless it is a bona fide occupational requirement reasonably necessary to the operation of the City's business. This includes but is not limited to hiring, termination, layoffs, job assignments, promotions, and pay.

We are also committed to providing a work environment that is free of all forms of unlawful harassment or discrimination. We will not tolerate the harassment or discrimination of our employees by anyone, including but not limited to: supervisors, co-workers, interns, volunteers, members of the public, elected or appointed officials, vendors or contractors.

Definitions:

Sexual Harassment

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature if (1) submission to the conduct is in any way made a term or condition of employment; (2) submission to (or rejection of) the conduct is used as the basis for any employment-related decision; or (3) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. This means no sexual or sexist language, jokes or innuendo; nude, profane, or obscene cartoons, drawings or photographs; whistling or catcalling; staring or leering; pinching, patting, inappropriate touching, unwelcome touching, unwelcome hugging or kissing; etc., or other conduct that

might create or contribute to a hostile or offensive working atmosphere.

Workplace Harassment

Unwelcome, unwanted or offensive conduct based on or because of a person's protected class is Workplace Harassment. We want to maintain a working environment free from all forms of unlawful harassment, whether based on race; color; religion; ancestry; national origin; age; marital or veteran status; physical or mental disabilities; on-the-job injuries; sex or pregnancy; sexual orientation or gender identity; military service; domestic violence victim; or any other legally protected characteristic or status. This means no ethnic jokes; religious slurs; use of offensive "slang" or derogatory terms or slurs denoting race, age, national origin, disability, etc.; mimicking one's speech, accent, or disability; derogatory comments regarding protected statuses or characteristics; or other conduct that might create or contribute to a hostile or offensive working atmosphere.

Policy:

Higher Standard Supervisors, managers, and department heads are held to a higher standard and are responsible to ensure that harassment does not occur in their work areas. They are expected to exercise reasonable care to prevent and promptly correct any discrimination, workplace harassment, or sexual harassment they know about or should know about. Supervisors and managers who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including termination.

Reporting Unlawful Discrimination or Harassment

Anyone who is subject to or are aware of what they believe to be discrimination, workplace harassment, sexual harassment or sexual assault should report that behavior to a supervisor, department head OR directly to the Human Resources Director if you are not comfortable doing so at the supervisor or department head levels.

Reports can be made verbally or in writing or through Red Flag Reporting and should contain the name of the person making the complaint and the name of the person who has been discriminated or harassed if they are not the same person. The names of those involved including witnesses and the specifics of the conduct, action or behavior the complainant believes is a violation of this policy. The date and/or time frame in which the alleged conduct occurred.

A report should be made to the designated individual within five (5) years of the

occurrence.

Upon receipt of a report of prohibited discrimination, workplace harassment, sexual harassment, or sexual assault, the designated individual or their designee shall provide a copy of this policy to the employee. The designated individual or their designee shall maintain appropriate records of all complaints.

Designated Individual

The Human Resources Director or their designee is the designated individual responsible for receiving reports of prohibited conduct and ensuring that all complaints are promptly and thoroughly investigated in as confidential a manner as possible under the circumstances. To this end, whenever a supervisor witnesses or receives a complaint of harassment or discrimination, he/she shall report the incident to the Human Resources Director. Appropriate corrective action will be taken, up to and including termination, where violations have occurred.

No employee will be discriminated or retaliated against in any way for bringing a question or complaint to our attention or cooperating in an investigation of harassment.

Investigation

The designated individual will coordinate and conduct or delegate responsibility for coordinating and conducting an investigation into the allegation.

Any complaint will be taken seriously and an investigation will be initiated as soon as possible.

Unless the victim signs a waiver of the employer's responsibility to conduct follow-up contacts with the victim, the employer shall follow-up with the victim of the alleged workplace harassment once every three months for a calendar year following the date on which the City received the report of workplace harassment to determine whether the alleged harassment has stopped or if the victim has experienced retaliation.

Retaliation

This policy prohibits retaliation against employees as a result of them:

- filing a complaint;
- participating in an investigation;

- reporting/observing discrimination, workplace harassment or sexual harassment.

Employees who believe they have been retaliated against for actions cited herein are encouraged to report the matter to their supervisor, manager, department head OR directly to the Human Resources Director if they are not comfortable doing so at the supervisor, manager or department head levels.

Confidentiality

All complaints will be dealt with in a discreet and confidential manner, to the extent possible. All parties are required to cooperate with the investigation and keep information regarding the investigation confidential.

Notice of Completion

The Human Resources Director/designee will notify the complainant and the accused when the investigation is concluded. The complainant will be advised if any part of the complaint is substantiated and that action has been taken. The complainant will not be given the specifics of the action. The complainant and the accused will be notified if the complaint is not substantiated.

Documentation

Any supervisor, department head or HR Director or their designee who receives a report of discrimination or harassment, must document such reports.

Any employee, supervisor or department head who observes or experiences what they believe to be incidents of discrimination or harassment should also document such incidents.

The City must maintain records of workplace harassment including:

- The date of the incident
- The date the complaint was received by the designated individual or their designee.
- The dates the investigation was started and closed.
- The investigation report.
- The outcome of the investigation and any actions taken by the City.
- The dates the City followed up with the victim, or a signed waiver of the City's responsibility to conduct follow up contacts with the victim.

Violations

Employees whose conduct violates this Administrative Regulation will be subject to disciplinary action up to and including termination.

Supervisors and Department Heads who know or should know of conduct in violation of this A/R who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including termination.

Prohibited Employment or Settlement Agreements

The City of Medford will not require, coerce or enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits that contains a non-disclosure provision, a non-disparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct that:

- Constitutes discrimination prohibited by ORS 659A.30, including conduct that constitutes sexual assault; or
- Constitutes discrimination prohibited by ORS 659A.082 or 659A.112 and that occurred between employees or between the employer and an employee in the workplace at a work-related event that is off the employment premises and coordinated by or through the employer; or
- Occurred between an employer and an employee off the employment premises.

Exceptions:

The City may enter into a settlement, separation or severance agreement that includes one or more of the following, only when an employee claiming to be aggrieved by conduct described under Prohibited Employment or Settlement Agreements section in this policy requests to enter into the agreement:

1. A provision described in section titled Prohibited Employment or Settlement Agreements of this policy;
2. A provision that prevents the disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault; or
3. A no-rehire provision that prohibits the employee from seeking re-employment with the employer as a term or condition of the agreement.

An agreement entered into under the Exceptions subsection of this section must provide the employee at least seven days after executing the agreement to revoke the agreement.

The agreement may not become effective until after the revocation period has expired.

If an employer makes a good faith determination that an employee has engaged in conduct prohibited by ORS 659A.030, including sexual assault, conduct prohibited by ORS 659A.082 or 659A.112, or conduct prohibited by this section, the employer may enter into a settlement, separation or severance agreement that includes one or more of the following:

1. A provision described in the section titled Prohibited Employment or Settlement

Agreements of this policy;

2. A provision that prevents the disclosure of factual information that relates to a claim of discrimination or conduct that constitutes sexual assault; or
3. A no-rehire provision that prohibits the employee from seeking re-employment with the employer as a term or condition of the agreement.

For violations that occur after October 1, 2020, an employee may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS 659A.885 (1) to (3).

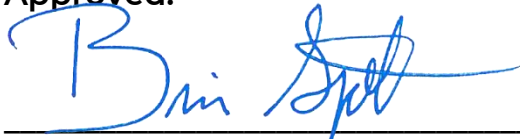
This section does not apply to an employee who is tasked by law to receive confidential or privileged reports of discrimination, sexual assault or harassment. A victim of workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the victim.

Other Reporting Options:

Nothing in this policy prevents any person from filing a formal grievance in accordance with a Collective Bargaining Agreement (CBA); a formal complaint with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC).

Nothing in this policy prevents any person from seeking remedy under any other available law, whether civil or criminal.

Approved:



02/18/2020

Brian Sjothun, City Manager

Legal Reference(s):

[Title VII: Civil Rights Act of 1964](#)

[Employment Act of 1967](#)

[Americans with Disabilities Act of 1990](#)

[Senate Bill 479](#)

[Oregon Revised Statute 659A.30, 659A.082, 659A.112, 659A.820, 659A.885](#)

[Bureau of Labor and Industries](#)

[Equal Employment Opportunity Commission](#)



ADMINISTRATIVE REGULATION

Number: 202
Adopted: 11/07/2002
Revised/Readopted: 10/15/2018
Orig. Number(s): 02-06-R2

Title: Violence Free Workplace

Purpose:

This regulation is intended to protect public health and safety and to minimize the city's liability exposure, and provide a workplace safe from threats or incidents of violence of any form.

Definitions:

"Threats or acts of violence" include conduct against persons or property that is sufficiently severe, offensive, or intimidating to alter the workplace conditions at the City of Medford, or to create a hostile, abusive, or intimidating work environment for one or more City of Medford employees, volunteers, elected or appointed officials.

Examples of Workplace Violence

General examples of prohibited workplace violence include, but are not limited to, the following:

- 1) All threats or acts of violence occurring on City of Medford property, regardless of the relationship between the City and the parties involved in the incident.
- 2) All threats or acts of violence not occurring on City property but involving someone who is on work time or acting in the capacity of a representative of the City of Medford.
- 3) All threats or acts of violence not occurring on City property involving employees, volunteers, elected or appointed officials of the City of Medford if the threats or acts of violence affect the legitimate interests of the City of Medford, including but not limited to conduct committed while in City uniform

or while driving a City vehicle .

- 4) Any threats or acts resulting in the conviction of an employee or agent of the City of Medford, or of an individual performing services on the City's behalf on a contract or temporary basis, under any criminal code provision relating to threats or acts of violence that adversely affect the legitimate interests and goals of the City of Medford.

Specific Examples of "Threats or Acts of Violence"

Specific examples of conduct that may be considered "threats or acts of violence" prohibited under this policy include, but are not limited to, the following:

- 1) Hitting or shoving an individual.
- 2) Threatening to harm an individual or his/her family, friends, associates, or their property.
- 3) The intentional destruction or threat of destruction of property owned, operated, or controlled by the City of Medford.
- 4) Making harassing or threatening telephone calls, letters or other forms of written or electronic communications.
- 5) Intimidating or attempting to coerce an individual to do wrongful acts that would affect the business interests of the City.
- 6) Harassing surveillance, also known as "stalking", the willful, malicious and repeated following of another person and making a credible threat with intent to place the other person in reasonable fear of his or her safety.
- 7) Suggesting or otherwise intimating that an act to injure persons or property is "appropriate."
- 8) Unauthorized possession or inappropriate use of firearms, weapons, or any other dangerous devices on City property.

While employees of the City may be required as a condition of their work assignment to possess firearms, weapons or other dangerous devices, or

permitted to carry them as authorized by law, it is the City's policy that employees are to use them only in accordance with departmental operating procedures and all applicable City codes and regulations and State and Federal laws.

Policy:

All employees, volunteers, members of the public, elected or appointed officials, vendors, or contractors are responsible for maintaining a safe and healthful work environment. Acts or threats of physical violence, including intimidation, harassment, coercion, or other disruptive behavior which involves or affects the City of Medford or which occur on City property will not be tolerated. Consistent with the City's Administrative Regulation 201 regarding unlawful discrimination and harassment, it is expected that employed, contracted, elected or appointed individuals with the City treat their coworkers and other members of the public with dignity and respect at all times. Civility in the workplace is an expected form of behavior.

Further, the City will respond appropriately to all reported incidents; will act to stop inappropriate behavior; and supervisors and all of the departments involved in responding to incidents will be supported by the City's management team in their efforts to deal with violent and potentially violent situations.

Application of Prohibition:

The City of Medford's prohibition against threats and acts of violence applies to all persons involved in the City's operation, including but not limited to City personnel, contract and temporary workers, elected or appointed officials and anyone else on City of Medford property. Violations of this policy by any individual on City property, by any individual acting as an employee or agent of the City while not on City property, or by any individual not on City property when his/her actions affect the public interest or the City's business interests will be followed by legal action, as appropriate.

Violation of any provision of this policy may lead to disciplinary action up to and including termination, as provided in the Municipal codes, City Administrative Rules and Regulations or applicable collective bargaining agreement.

Procedures:

Actions to be Taken

Any person who makes substantial threats, exhibits threatening behavior, or engages in violent acts on City of Medford property will be removed from the premises by a police officer as quickly as safety permits, and shall remain off the City of Medford's premises pending the outcome of an investigation. The City will initiate a decisive and appropriate response. This response may include, but is not limited to, suspension and/or termination of any business relationship, reassignment of job duties, suspension or termination of employment, and/or criminal prosecution of the person or persons involved.

Whenever the Human Resources Department, after consultation with the affected department and the Police Department, determines that an individual terminating employment with the City of Medford may pose a threat to employees of the City, the employee shall be advised that he/she is barred from City property, and the HR department shall notify other city departments of the trespass order, and the need for precautionary actions pursuant to departmental safety plans and procedures. The HR department shall divulge only information necessary to protect the safety of all employees.

Employee Obligations

Each employee of the City is required to report incidents of threats or acts of physical violence of which he/she is aware. The report must be made to the reporting individual's immediate supervisor, or if the immediate is not available or the employee does not feel comfortable reporting the issue to the immediate supervisor, to either a management level supervisory employee or the City's Human Resources Department. The City understands the sensitivity of the information reported and will recognize and respect the privacy of the reporting individual(s) to the extent possible. Identification of the reporting party shall be provided on a confidential basis to the fullest possible extent consistent with the purposes of this policy.

Supervisory Obligations

Each supervising employee shall promptly refer any such incident to the Human Resources Department and an appropriate management level supervisor, who shall take corrective action in accordance with the Municipal codes, City Administrative Rules and Regulations and any applicable collective bargaining agreement. Concurrently with the initiation of any investigation leading to a proposed disciplinary action, the management level supervisor shall report the incidents of

threats or acts of physical violence to the Medford Police Department, which shall make a follow-up report to the City's Human Resources Department.

Nothing in this policy alters any other reporting obligation established in City policies or in state, federal or other applicable law.

Non-Employee Reporting

In cases where the reporting individual is not a City employee, the report should be made to the City of Medford Police Department. The Police Department will advise the Human Resources Department of the reported incident to ensure appropriate action.

Restraining or Protective Order

All individuals who apply for or obtain a protective or restraining order which lists specific City locations as being protected areas shall provide to a management representative of the City a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order which is made permanent.

Dissemination of Policy

All employees, elected or appointed officials will be given copies of this policy, and asked to acknowledge that they have read and understand it. All new employees, elected or appointed officials will be given a copy of this policy as part of their orientation by the Human Resources Department.

Employee Questions

Questions regarding an employee's rights and obligations under this policy should be directed to the employee's department head or the Human Resources Department.

Approved:



10/15/2018

Brian Sjothun, City Manager

Legal Reference(s):
Administrative Regulation 201

This page intentionally left blank.

OREGON PUBLIC MEETINGS LAW

The Public Meetings Law, ORS 192.610-192.690, was enacted by the Oregon Legislature in 1973 and establishes state policy the public is entitled to know how public organizations operate. Almost all deliberations and decisions of public bodies are open to attendance by interested persons.

The Public Meetings Law apply not only to the state, but also the cities and counties despite any conflicts with their charters, ordinances or other rules. The Public Meetings Law applies to meetings of the “governing body of a public body.” A “public body” is the state or local government council, board, commission, bureau, committee, subcommittee or advisory group.

PUBLIC MEETING

Public Meetings Law defines a meeting as the convening of any governing body “for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter”.

QUORUM REQUIREMENTS

A quorum is reached by the presence of 51% of the number of members of the governing body. Medford City Council has a quorum with 5 members present (8 members total). A gathering of less than a quorum is not a meeting under the meetings law. The law applies to committees, subcommittees and other advisory groups that are charged by the Council with making recommendations. The recommendations must be the result of formal votes taken at meetings at which a quorum was present.

Before calling the meeting to order, it is the duty of the Chair to know whether a quorum is present. If there is not a quorum, the meeting is called to order, the absence of a quorum is announced, and the meeting is adjourned.

NO BUSINESS CAN BE TRANSACTED IN THE ABSENCE OF A QUORUM.

A recess may be called to provide time to call absent members in hope of obtaining a quorum for an important meeting. A motion may be made to fix the time to which to adjourn, which provides for a continuation of business scheduled for the meeting. The requirement of a quorum serves to protect against an unrepresented action taken by a small number of individuals on behalf of the entire meeting body. Any actions taken without a quorum can be declared null and void at the next meeting.

NOTICE OF MEETINGS

Public Meetings Law requires that public notice be given of the time and place of meetings. This requirement applies to regular, special and emergency meetings. The public notice requirements apply to any “meetings” of a “governing body” subject to the law, including committees, subcommittees and advisory groups. Staff support will work with the Chair to ensure notice is given appropriately.

MEETING MINUTES

Minutes must be kept of all standing and ad-hoc board and commission meetings. Minutes shall include members present; motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition, results of all votes and the vote of each member by name, the substance of any discussion on any matter, and a reference to any document discussed at the meeting.

ROLE OF THE CHAIR

The Chair is the Chair and the Presiding Officer of the meeting and their duties include:

- Open the meeting on time and call the meeting to order
- Announce in proper sequence the business on the agenda
- Recognize members who are entitled to the floor
- State and put to a vote all legitimate questions that arise during the meeting. If a motion is out of order, the Chair should rule it out of order
- Protect the members from frivolous or delaying motions by refusing to recognize them
- Enforce the rules regarding debate and keep order
- Expedite business in a way compatible with the rights of the members
- Decide all questions of order
- Respond to inquiries of members
- Declare the meeting adjourned

ROLE OF THE BOARDS AND COMMISSION MEMBERS

- Members should make every effort to attend every meeting and be on time
- Effective members understand the rules of procedure as well as parliamentary procedure and abide by them
- Members should address all remarks through the Chair
- Members should use their parliamentary knowledge in a constructive manner, rather than hindering or obstructing the business of the meeting
- Members should be knowledgeable and familiar with the issues before them so they can participate in the meeting by:
 1. Introducing motions;
 2. Seconding another member’s motion;
 3. Debating the issue according to the rules or asking questions of information regarding issues; and
 4. Voting
 - a. A member may vote but cannot be forced to do so. A member should not vote on questions of direct personal or pecuniary interest not common to other members.

- b. A member may change a vote before the chair announces the result of the vote. After the result is announced, a majority of the Board or Commission must vote to allow the change.
- c. A member may request a rising vote by calling "Division" when a voice vote or show of hands is in doubt.

OREGON PUBLIC RECORDS LAW

Oregon Public Records Law represents the public's right to information. Under these laws, the written record of public business is available to any person, regardless of the person's identity, motive, or need, with some important exceptions. Thus, the basic principle behind the Public Records Law is the burden of proof regarding no disclosure of a public record falls on the public body or public official, not on the person asking for the record. Exceptions to Public Records Law are known as "exemptions." Despite the lengthy catalogue of exemptions contained in Public Records Law, it must always be viewed in favor of disclosure, unless the law expressly prohibits disclosure.

Public Records Law (ORS 192.311 to 192.478) applies to all "public bodies," including governing bodies, officers, departments, commissions, etc. Based on the above definition, all City Councils are subject to the Public Records Law and the Law will by extension apply to all departments, committees and agencies of the City.

RECORDS COVERED BY PUBLIC RECORDS LAW

Public Records Law applies to "...every state officer, agency, department, division, bureau, board and commission; every county and City governing body, school district, special district, municipal corporation, and any board, department, commission,, Council or agency thereof, and any other public agency of this state." A "public record" is **"any writing that contains information relating to the conduct of the public's business...prepared, owned, used or retained by a public body regardless of physical form or characteristics."** In ORS 192.311(5)(a), "writing" is broadly defined to incorporate all formats, from handwriting to electronic. Handwritten notes taken during Council meetings and all forms of electronic communications including e-mails, so long as the record contains information relating to the conduct of public business are considered public records.

RECORDS RETENTION REQUIREMENTS

Oregon Public Records Law requires that public records must be retained as set forth in the Secretary of State's Record Retention Manual. This manual sets the retention periods based on the information contained within the public record, NOT based on the medium of the record. Nearly every record has a retention period, ranging from one

year to permanent. The City Recorder is the City's resource person for questions regarding retention of public records.

DISCLOSURE OBLIGATIONS AND PROCEDURES

Public Records Law requires a designated records officer and a public records disclosure policy. The City Recorder is the City's public records officer and has an established policy for records requests. The records request form is available online on the City's website at www.cityofmedford.org.

PUBLIC RECORDS EXEMPTIONS

ORS 192.345 and 192.355 outline the exemptions to Public Records Law. Section 192.501 outlines "conditional exemptions", noting records may be withheld from disclosure "unless the public interest requires disclosure." The City's decision to apply a conditional exemption must indicate that the need for confidentiality outweighs the public interest in disclosure. Conditional exemptions include, but are not limited to, records pertaining to litigation, trade secrets, criminal investigations, personnel examinations, private business operations, real estate appraisals (prior to acquisition or sale), employee relations or personnel discipline actions.

ORS 192.355 lists additional conditional exemptions for records such as internal advisory communications, information of a personal nature and confidential submissions.

The exemptions are stated in absolute terms and do not require a balancing of interest because the state legislature has already determined that the confidentiality interests outweigh public disclosure interests as a matter of law.

ETHICS AND CONFLICTS OF INTEREST

GOVERNMENT ETHICS

Public office is a public trust. This concept is enforced through state law in provisions that prohibit public officials from using their positions to enrich themselves, their families or businesses with which they or their close relatives are associated.

For more information, please refer to the Government Standards & Practices Manual or contact the Oregon Government Ethics Commission (www.oregon.gov/ogec).

ACTUAL AND POTENTIAL CONFLICTS OF INTEREST

Public officials may face situations in which their actions may, or will, result in pecuniary benefit for themselves, their relatives, or businesses with which they or their relatives are associated. In such cases, the state ethics law describes the proper response. The response depends upon whether the conflict is an **actual** conflict or a **potential** conflict.

Keep in mind, however, that under no circumstances may an official use their office for the purpose of benefiting the official, a relative or an associated business.

ACTUAL CONFLICT OF INTEREST

An actual conflict of interest exists when a public official is faced with acting, deciding or recommending an action, and the effect of that action certainly would be to the private pecuniary benefit or detriment of the official, the official's relative, or any business with which the person or a relative of the person is associated.

Example: A Councilmember owns one of two well-digging companies in the City. The Council is voting upon whether to adopt a proposed ordinance that would impose licensing fees on well-digging companies. His vote will certainly have the effect of a financial detriment or benefit upon his company.

Example: A systems operation official approves an employment agreement with a technical support company that employs her son. The approval would be to the pecuniary benefit of a business with which her relative is associated.

ORS 244.040(6) also states "No person shall attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member".

Example: The member of the Planning Commission is prohibited from appearing before that same Planning Commission to represent a client for a fee, but a business partner of the Planning Commission member could represent the same client for a fee.

POTENTIAL CONFLICT OF INTEREST

A potential conflict of interest exists when a public official is faced with acting, deciding or recommending an action, and the effect of that action could be to the private pecuniary benefit or detriment of the official, the official's relative, or any business with which the person or a relative of the person is associated.

Example: If the public official as an independent contractor performs services for a business that comes before the public body upon which the official sits, a potential conflict exists. The decisions of the public body could result in private pecuniary benefit to the official.

CONFLICT OF INTEREST EXCEPTIONS

Actions affecting an entire class do not create a conflict of interest. In other words, no conflict exists if the public official's action would affect other members of a large class of people in the same way it would affect the public official.

For example, if the City Council was voting to adopt a City-wide tax cut for retail businesses, Councilmembers who owned retail businesses would not have a conflict because of the exception.

However, if the Council was voting to adopt a tax cut for software companies, and a Councilmember owned one of only three software companies in the City, the

Councilmember would have an actual conflict of interest for which the “class” exemption would not apply. In this case, three software companies would not be considered a large enough class to gain the exemption.

Other exceptions include the following:

1. Membership in a particular class required by law as a prerequisite to holding office does not give rise to a conflict of interest. For example, a commission which recommends fees for the use of certain chemicals requires that one of its positions be filled by a representative of a company which uses such substances. That person is not faced with conflict when deliberating upon the amount of a fee.
2. No conflict exists when the pecuniary benefit or detriment arises out of unpaid membership in or membership on the board of directors of a nonprofit corporation which is tax-exempt under section 501(c) of the Internal Revenue Code.

METHODS OF HANDLING ACTUAL OR POTENTIAL CONFLICTS OF INTEREST

In every case in which a public official is met with an actual or potential conflict of interest, the official must disclose the conflict. Elected or appointed officials serving on a board or commission must publicly announce the nature of the conflict. The conflict must be recorded in the official minutes of the public body. A public official need only announce a conflict of interest once during the course of the particular meeting, even though discussion or action may be interrupted.

When faced with an actual conflict of interest, a public official must, after disclosing the conflict, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue. The public official should make certain that the minutes reflect that the public official did not participate in the discussion or vote.

Rule of Necessity: If the official’s vote is necessary to meet a requirement of minimum number of votes to take official action, then the official is eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

CAVEAT: If voting under the “rule of necessity” would violate the code of ethics (for example, where a vote would constitute “using” the office to obtain financial gain or avoid financial detriment), then the public official may not vote.

When faced with a potential conflict of interest, a public official must announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official. Following the declaration of the conflict, the official may discuss and vote on the matter.

CAVEAT: A public official may not take official action after declaring a potential conflict of interest if such action would violate any provision of the code of

ethics.

LESSONS LEARNED FROM LANE COUNTY

The following article was printed in the League of Oregon Cities weekly newsletter in 2010. It can be found at

http://www.orcities.org/Portals/17/publications/newsletters/weekly/lessonsfromlanecounty_final.pdf.

Lessons from Lane County

How a recent lawsuit in Lane County might just change the way cities conduct business.

At the beginning of 2010, two citizens sued Lane County and three of its commissioners, alleging violations of Oregon's public meeting laws, (ORS 192.610 – 192.710). The circuit court recently issued a 44-page written decision in the case holding two of the three commissioners personally liable for violations of the law. The circuit court's decision does not necessarily dictate how the issues litigated in this case will be decided if raised in a different case in the future. Nonetheless, the court's decision raises at least four issues to which city officials and employees should pay attention. Even though this article briefly summarizes these issues, city officials and employees are encouraged to read the court's decision and seek advice from their respective city attorneys about how best to comply with Oregon Public Meeting Laws.

Lesson #1 – Use of a personal computer and a private e-mail account to conduct city business may subject your personal computer or private e-mail account to disclosure under a public records request or in a litigation discovery request.

The League of Oregon Cities and city attorneys across the state have advised city officials and employees for several years that using a personal computer or a private e-mail account to conduct city business may subject the hard drive of the personal computer or the private e-mail account to disclosure under a public records request or in a litigation discovery request. This issue first arose several years ago in a litigation matter where the court required city councilors to have the hard drives of their personal computers searched as part of a litigation discovery request. In the Lane County case, once again, local government officials were asked about and required to produce documents sent from private e-mail accounts. While the issue of whether disclosure was required was not a significant issue in the case, the fact that it occurred is another reminder to city officials and employees that conducting city business on a personal computer or using a private e-mail account will not shield those communications from disclosure.

Lesson #2 – Use of e-mail by a quorum of a public body might constitute a meeting under Oregon's Public Meeting Laws.

It has long been an open question regarding whether a quorum of a governing body could violate the public meeting laws by communicating through the use of e-mail. (See the League's April 2009 edition of *Local Focus*, available at www.orcities.org, for a more in-depth article on this issue.) ORS 192.670(1) states that "[a]ny meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with [the public meeting laws]." In the Lane County case, the circuit court concluded that e-mail is an "electronic communication" as that term is used in ORS 192.670(1). (Slip Opinion at p. 33.) Thus, for the first time in Oregon, a court has concluded that a meeting can occur through the use of e-mail.

Notwithstanding that the court concluded that e-mail was an electronic communication for the purposes of the public meeting laws, the question remained whether the e-mail communications in question constituted a "meeting." ORS 192.610(5) defines a meeting as "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." The defendants argued that the e-mails in this case were more like a letter or short telephone message that didn't amount to making a decision or deliberating toward a decision. The court, however, rejected this argument, stating, "[b]ased on the evidence presented in the present case, this court rejects defendants' analogy to e-mail as the equivalent of a letter. As the various e-mails show, they are far more like the normal back and forth in conversation than correspondence in letter form. There is the opportunity for immediate viewing and response. That in fact occurred in several e-mails in this case." (Slip Op. at p. 34, n. 32.)

In the end, the court stated that its determination that the use of e-mail could result in a meeting was "probably of no consequence" to its final decision that a violation of the public meeting laws occurred. This is because e-mails in question were about a decision for which that statute of limitations period had expired. Nonetheless, the court's determination is the strongest warning yet for city officials and employees that communications made through e-mail involving a quorum of a governing body might constitute a meeting under the public meeting laws.

Lesson #3 – Serial meetings may violate Oregon's Public Meeting Laws

As discussed above, the public meeting laws define a meeting as "the convening of a governing body of a public body for which a quorum is required in order to make a

decision or to deliberate toward a decision on any matter” (ORS 192.610(5)). Historically in Oregon, this definition required the convening of a quorum of a governing body in the same place (or on the same conference call) before a meeting could occur. However, in the Lane County case, the court concluded for the first time in Oregon that a violation of the public meeting laws can occur even when a quorum of a public body never meets at the same time to make a decision or deliberate toward a decision.

The court set forth the following test to determine whether a meeting occurred:

- (1) did at least a quorum of the governing body;
- (2) make a decision or deliberate toward deciding a matter; and
- (3) in any setting that was private and not open to the public. (Slip Op. p. 34.)

In this case, the court reached a factual conclusion that a quorum of the Lane County Board of Commissioners had private conversations and meetings in which they deliberated and reached a collective decision on what to include in a supplemental budget even though a quorum of the commission never discussed the issue together at the same time outside the scope of a public meeting. As explained by the court, “[t]he evidence did not show that any three [of the five] commissioners were ever in the same room at the same time talking about this matter. That does not mean that the continuing multiple conversations were not a deliberation. All involved knew that a quorum of the board was working towards a final decision outside of the public meeting context. . . . In effect, the public meeting vote on December 9 was a sham. It was orchestrated down to the timing and manner of the vote to avoid any public discussion.” (Slip Op. at pp. 36-37.)

Although this is the first time in Oregon that a court has found that these types of communications constitute a meeting, courts and attorney generals in other states have reached similar conclusions for many years. (See, e.g., *Roberts v. City of Palmdale*, 20 Cal. Rptr. 2d 330, 337 (Cal. 1993), *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 64 P. 3d 1070 (2003), Fla. Atty. Gen. Op. 96-35 (1996), 2/23/94 Idaho Atty. Gen. Op. to Mike Wetherall.)

These types of meetings, often called “serial” or “seriatim” meetings, occur when deliberations or decisions of a quorum of a governing body take place through one-on-one meetings or in meetings with groups less than a quorum, outside of official public meetings, in a deliberate attempt to build a majority for or against a matter. As explained by the California Supreme Court in the *Roberts* case mentioned above, “[o]f course the intent of [California’s open meeting laws] cannot be avoided by subterfuge; a concerted plan to engage in collective deliberation on public business through a series of letters or

telephone calls passing from one member of the governing body to the next would violate the open meeting requirement.” (20 Cal. Rptr. 2d at 337.)

Thus, for example, in the *Dewey* case mentioned above, the Nevada Supreme Court analyzed whether a violation of that state’s public meeting laws occurred when staff of a redevelopment agency met with the entire governing body of the agency outside the scope of a public meeting in separate groups of less than a quorum. The Nevada Supreme Court concluded that no violation occurred because staff did not share the thoughts, questions, or opinions of the members who attended one briefing with the members who attended another briefing. Further, the court stated that there was no evidence of polling by the staff to determine the opinions or votes of the members of the governing body. In addition, the court concluded that there was no evidence in the record that the briefings resulted in the governing body taking action or deliberating on the issue outside of a public meeting. *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 64 P. 3d 1070 (2003)

Likewise, the Florida attorney general has advised that a school board member may prepare and circulate an informational memorandum or position paper to other board members without violating that state’s open meeting laws. However, the attorney general cautioned that use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the open meeting laws as such actions would constitute deliberations. (Fla. Atty. Gen. Op. 96-35 (1996); see also, Fla. Atty. Gen. Op. 01-20 (e-mail communication of factual background information from one council member to another is a public record but does not constitute a meeting subject to the Florida’s open meeting laws when it does not result in the exchange of council members’ comments or responses on subjects requiring council action).

Following in the footsteps of these other states, the Lane County decision provides the first instance in Oregon where a court has found a violation of the state’s public meeting laws because of the use of serial meetings. Because of this, city officials and employees in Oregon should be careful not to engage in serial meetings where the thoughts, questions or views of a quorum of a governing body are shared. One-way communications are likely still permissible, but communications that could constitute deliberations or even worse reaching a decision should be avoided.

Lesson #4 – Knowledge of the requirements of the public meeting laws and failure to comply with those requirements might constitute willful misconduct that would subject individual city councilors to personal liability.

State law includes provisions that require a public body to pay the attorney fees of a plaintiff that is successful in proving a violation of Oregon's open meeting laws. (ORS 192.680(3).) The law further provides that if the violation is the result of willful misconduct by any individual member or members of the governing body, that the member or members shall be jointly and severally liable to the public body for the amount required to be paid to the plaintiffs. (ORS 192.680(4).) The open meeting laws, however, do not define what constitutes "willful misconduct" for the purposes of determining the liability of individual members of a governing body.

In the Lane County decision, the court set forth two different tests that could be used to determine if a public official engaged in willful misconduct in the context of a violation of the public meeting laws. First, the court explained that willful misconduct could require that a public official act with "a conscious objective to violate those particular statutory provisions." In other words, it is conduct that is intended to cause a particular result – a violation of the law. Second, the court explained that, willful misconduct could occur if an official "had knowledge of the law's requirements and thereafter failed to follow those requirements." (Slip Op. at 39.) Because the court concluded that two of the commissioners engaged in willful misconduct under either standard, the court did not decide which standard the public meeting laws require to be proven before liability may be imposed on individual public officials. As part of its conclusion, however, the court specifically mentioned the fact that the commissioners ignored advice from the county counsel to cease engaging in deliberations outside the scope of a public meeting. (Slip. Op. at p. 41.)

As a consequence of the court's decision, city officials should be mindful that a court could very well apply the lesser standard – knowledge of the law's requirements and a failure to follow those requirements – to any violations of the public meeting laws. As such, city officials are encouraged to ask their city staff and city attorneys questions when there is uncertainty about what the public meeting laws require. Likewise, city officials should adhere to advice provided by their city staff members and city attorneys, as failure to do so might result in a finding of willful misconduct.

The Lane County decision may still be appealed to the Oregon Court of Appeals and the Oregon Supreme Court, either of which could reverse the decisions made by the circuit court. Nonetheless, until such time as a reversal occurs, city officials and employees should be mindful of the lessons learned from the Lane County decision.

A copy of the circuit court's decision in the Lane County case is available on the League's web site at:

<http://www.orcities.org/Portals/17/Publications/Newsletters/Weekly/dumdi-andyopenmeetingdecision-2011-01-18.pdf>.

Editor's Note: Because of the complexities and nuances of the law in this area and of the court's opinion, this article is necessarily general and is not intended to provide legal advice. This article should not serve as a substitute for competent legal counsel. Please consult with your city attorney to ensure that that you fully comply with Oregon's public meeting laws.